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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6748

DATE COMPLAINT FILED: Aug. 15, 2013

DATE OF NOTIFICATIONS: Aug. 20, 2013¹

LAST RESPONSE RECEIVED: March 19, 2014

DATE ACTIVATED: March 25, 2014

EXPIRATION OF SOL: June 26, 2018 (Earliest)
June 28, 2018 (Latest)

ELECTION CYCLE: 2014

COMPLAINANT: Daniel G. Hempey

RESPONDENTS: Hanabusa for Hawaii and George S. Yamamoto in
his official capacity as treasurer
Pharmaceutical Research and Manufacturers of
America
Christopher Raymond

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 441b(a)
2 U.S.C. § 441i(e)(1)(A)
11 C.F.R. § 109.20
11 C.F.R. § 109.21
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns allegations that Hanabusa for Hawaii and George S.
Yamamoto in his official capacity as treasurer (collectively, the "Committee"),
Representative Colleen Hanabusa, or an agent of the Committee or the candidate
impermissibly coordinated with and solicited or directed funds from the Pharmaceutical

¹ All of the respondents with the exception of Christopher Raymond were first notified of the Complaint via letters dated August 20, 2013. Raymond was notified via e-mail on February 21, 2014.

1 Research and Manufacturers of America ("PhRMA") in violation of the Federal Election
2 Campaign Act of 1971, as amended (the "Act"). The allegations concern a June 28,
3 2013, e-mail that Christopher Raymond, Representative Hanabusa's deputy chief of staff
4 at the time, sent regarding communications with two PhRMA employees, Nick Shipley,
5 Senior Director Federal Affairs, and Robert Filippone, Senior Vice President Federal
6 Affairs, about PhRMA's support for the Committee. The record also includes
7 information and correspondence regarding Shipley's and Filippone's June 26, 2013,
8 breakfast meeting with Hanabusa and Erica Slates, a volunteer serving as the
9 Committee's Deputy National Finance Director, to which Raymond's e-mail relates.²

10 Because there is no available information indicating that PhRMA ever made any
11 contributions in response to the alleged solicitation or coordinated its expenditures with
12 Hanabusa or the Committee, we recommend that the Commission find no reason to
13 believe that PhRMA made or the Committee received prohibited contributions in
14 violation of 2 U.S.C. § 441b(a).

15 As to whether the Committee or Hanabusa, or an agent of either, may have
16 solicited or directed funds from PhRMA, the contemporary correspondence of Raymond
17 with and about PhRMA suggests that he or another agent of the Committee may have
18 solicited or directed funds from PhRMA. And although unsworn statements that
19 Hanabusa and four other staffers submitted to the Commission deny that they solicited
20 non-federal funds in connection with Hanabusa's candidacy for U.S. Senate, Raymond's

² The Complaint also alleges that because Raymond sent his e-mail approximately one month after Hanabusa stated in a telephone town hall her opposition to legislation that PhRMA also opposed, it appears that Hanabusa violated the House Code of Official Conduct by improperly linking an official act with campaign activities. Compl. at 5 (Aug. 15, 2013). Because this allegation relates to the House Code and not the Act, the Commission lacks jurisdiction to address it.

1 sworn declaration nowhere expressly denies that he solicited or directed funds on behalf
2 of the Committee.

3 Nonetheless, we conclude that the vagueness of the evidence that such a
4 solicitation occurred and the apparent lack of any PhRMA contribution or expenditure
5 benefiting the Committee together suggest that further administrative fact-finding
6 proceedings would not be a prudent use of Commission resources under the
7 circumstances. Accordingly, we recommend that the Commission exercise its
8 prosecutorial discretion to dismiss the possible violation of 2 U.S.C. § 441i(e)(1)(A)
9 under *Heckler v. Chaney*,³ but issue letters of caution to the Committee and Raymond.

10 II. FACTUAL AND LEGAL ANALYSIS

11 A. Factual Background

12 1. Respondents

13 Hanabusa represents Hawaii's 1st Congressional District. The Committee is
14 Hanabusa's principal campaign committee for Hanabusa's 2014 U.S. Senate campaign.⁴
15 Raymond worked for Hanabusa from early 2010⁵ until August 2013, when he resigned
16 after the events at issue in the Complaint became public.⁶

³ 470 U.S. 821 (1985).

⁴ Comm. Resp. at 2 (Sept. 30, 2013).

⁵ Decl. of Christopher Raymond ¶ 2 (Mar. 19, 2014) (attached to Raymond Resp. (Mar. 19, 2014)) ("Raymond Decl."). According to Raymond's Response, his Declaration "tracks what he said to the Department of Justice and Federal Bureau of Investigation in an interview on October 7, 2013." Raymond Resp. at 2. We have not contacted the Department of Justice or the Federal Bureau of Investigation in connection with this matter.

⁶ *Complaint Alleges Wrongdoing by Congresswoman Hanabusa's U.S. Senate Campaign*, HAWAII REPORTER, Aug. 8, 2013, available at <http://www.hawaiiireporter.com/?p=403569> (quoting Raymond's statement of resignation asserting, "I have not violated any campaign finance laws, and it is unfortunate what a distraction this misunderstanding has become").

PhRMA is an incorporated non-profit trade association organized under section 501(c)(6) of the Internal Revenue Code, and a "membership organization" under 11 C.F.R. § 114(e)(1).⁷ According to its website, "PhRMA's mission is to conduct effective advocacy for public policies that encourage discovery of important new medicines for patients by pharmaceutical and biotechnology research companies."⁸ PhRMA also sponsors a PAC registered with the Commission as a qualified non-party committee.⁹

2. The Committee's Communications with PhRMA

Raymond first met Shipley at a June 17, 2013, "meet and greet."¹⁰ At the event, a drug company representative told Raymond that she thought that PhRMA probably would be interested in supporting the Committee, although Raymond did not recall whether the representative described what that support might entail.¹¹ Later that day, Raymond sent an e-mail to Shipley¹² in which he stated that "[t]here is no doubt the Congresswoman would benefit from the support of PhRMA — as she mentioned we are starting this race at a significant financial disadvantage[.]" and offered to schedule a

⁷ PhRMA Resp. at 1 (Nov. 26, 2013).

⁸ See About PhRMA, <http://www.phrma.org/about> (last visited July 10, 2014).

⁹ PhRMA Resp. at 1.

¹⁰ Raymond Decl. ¶ 4; Aff. of Nick Shipley ¶ 3 (Nov. 22, 2013) (attached to PhRMA Resp.) ("Shipley Aff."). Shipley corroborates that he first met Raymond at the June 17, 2013, "meet and greet," but Shipley states that the event was hosted by one of PhRMA's member companies for Representative Hanabusa, while Raymond contends that the "meet and greet" was organized by and for the Committee.

¹¹ Raymond Decl. ¶ 4.

¹² In all relevant e-mails currently in our possession, Raymond used his personal address, See Raymond Decl., Att. at CR000001-09, 11-12; Compl. App. 1; Comm. Resp. Ex. A.

1 breakfast meeting for Hanabusa, Shipley, and himself.¹³ The following day, Shipley
2 replied, "I think we can talk more extensively in person about what we can do here to
3 help support the Congresswoman[,] and suggested that Filippone join the breakfast
4 meeting."¹⁴

5 Raymond scheduled the breakfast meeting for Hanabusa, Shipley, Filippone, and
6 himself at 8:30 A.M. on June 26, 2013, but Slates attended in Raymond's stead when he
7 became ill.¹⁵ The meeting lasted less than an hour.¹⁶ In response to the Complaint,
8 Hanabusa, Shipley, Filippone, and Slates each has provided either a sworn affidavit or an
9 unsworn statement concerning the meeting. Although those statements present slightly
10 different accounts of what was discussed, all four state that the discussion included:
11 (1) a general overview of the issues that Hanabusa faces in the U.S. Senate race;
12 (2) a description of ways that PhRMA has supported candidates in the past; and
13 (3) no commitments by PhRMA about what, if anything, it might do to support the
14 Committee.¹⁷

15 Hanabusa and Slates state in their unsworn statements that they listened to
16 descriptions of ways that PhRMA has supported candidates in the past, but did not

¹³ Raymond Decl. ¶ 6; *Id.*, Att. at CR000002; Shipley Aff. ¶¶ 4-5.

¹⁴ Raymond Decl., Att. at CR000002.

¹⁵ Raymond Decl. ¶ 8; *Id.*, Att. at CR000001.

¹⁶ Aff. of Robert Filippone ¶ 5 (Sept. 27, 2013) (attached to PhRMA Resp.) ("Filippone Aff.").

¹⁷ Filippone Aff. ¶¶ 5-6; Shipley Aff. ¶ 6; Decl. of Congresswoman Colleen Hanabusa ¶ 3 (Sept. 26, 2013) (attached to Comm. Resp.) ("Hanabusa Decl."); Decl. of Erica Slates ¶ 3 (Apr. 18, 2013) (attached to Comm. Resp.) ("Slates Decl."). The descriptions of the breakfast meeting in Hanabusa's and Slates' Declarations are worded identically, but for the references to Slates in Hanabusa's Declaration and to Hanabusa in Slates' Declaration.

1 respond.¹⁸ Shipley and Filippone state in their sworn affidavits that they discussed the
2 possibility of PhRMA's PAC hosting a fundraiser on Hanabusa's behalf, but neither
3 Hanabusa's nor Slates' Declarations include such a statement.¹⁹ Shipley and Filippone
4 also state that at the end of the meeting, at their request, Hanabusa identified Jennifer
5 Sabas and Peter Boylan as individuals not affiliated with the campaign with whom
6 Shipley and Filippone might speak to gain additional understanding of Hawaiian politics,
7 but Hanabusa did not provide Sabas' or Boylan's contact information.²⁰ Shipley also
8 recalled that Hanabusa suggested that he and Filippone contact John Miyasato,²¹ the
9 founder and managing principal of Crossroads Campaign Solutions, a political consulting
10 firm.²²

11 The four attendees at the breakfast meeting state that Hanabusa and Slates did not
12 solicit and Shipley and Filippone did not commit PhRMA to provide any support to the
13 Committee. An exchange of text messages between Slates and Raymond immediately
14 following the meeting, however, suggests that PhRMA did commit to helping
15 Hanabusa.²³ At 9:41 A.M. on June 26, 2013,²⁴ moments after Hanabusa's breakfast

¹⁸ Hanabusa Decl. ¶ 3; Slates Decl. ¶ 3.

¹⁹ Filippone Aff. ¶¶ 5-6; Shipley Aff. ¶ 6.

²⁰ Filippone Aff. ¶ 7; Shipley Aff. ¶ 7.

²¹ Shipley Aff. ¶ 7.

²² See Crossroads Campaign Solutions, Who We Are, <http://crossroadscampaigns.com/staff> (last visited July 21, 2014). According to its website, Crossroads Campaign Solutions helped Hanabusa win her election for U.S. Representative in 2010. See Crossroads Campaign Solutions, Clients, <http://crossroadscampaigns.com/clients> (last visited July 21, 2014). The Committee appears to use Crossroads Campaign Solutions in Hanabusa's current race for U.S. Senate, although Miyasato himself purportedly has "a reduced role[.]" Raymond Decl. ¶ 12.

²³ See Raymond Decl., Att. at CR000010.

1 meeting with PhRMA concluded, Slates wrote in a text message to Raymond, "Went
2 very well – they're all in[.]" Raymond then inquired, "What type of money did they
3 promise?" Slates replied, "They'll do PAC bundling in addition to a couple other
4 things."²⁵

5 Later the same day, in response to Raymond's e-mail inquiring how the meeting
6 went, Shipley wrote:

7 The meeting went great, we very much want to (and will) help out the
8 Congresswoman. PhRMA can do the obvious PAC donations, but I think we are
9 going to look at doing some independent stuff as well. It was very helpful to
10 spend some time with the Congresswoman to understand what works and doesn't
11 work in Hawaiian politics and what message may be important.

12
13 There were a couple people that the Congresswoman encouraged us to connect
14 with, and I was hoping maybe you could give some contact info on them. First,
15 from Sen. Inouye's staff, she mentioned a former Chief of Staff back in Hawaii as
16 well as a former Communications Director in DC. Unfortunately I don't recall
17 the names offhand, but perhaps if you knew them you could pass them on and we
18 can reach out. Second, she also mentioned working with John Miyasato's
19 organization, Crossroads Campaigns, which I assume is working the race for you
20 guys as well; can you let me know who is the best contact over there to talk to?²⁶

21 According to Raymond and contemporaneous e-mails between Raymond and
22 Shipley, on June 28, 2013, Raymond and Shipley had a brief conversation to discuss the
23 individuals that Shipley named in his e-mail and to identify who Shipley would be most
24 interested in contacting.²⁷ Raymond apparently believed that Shipley was interested in

²⁴ Although some of Raymond's correspondence appears to have been sent from Hawaii's time zone, all of the time stamps for this text message exchange appear to be Eastern Daylight Time, the same time zone where the meeting occurred.

²⁵ *Id.*

²⁶ Raymond Decl. ¶¶ 9, 11, Att. at CR000009.

²⁷ Raymond Decl. ¶ 12. Neither Shipley's Affidavit nor PhRMA's Response refers to any telephonic communications with Raymond on or about June 28, 2013, or regarding the individuals Hanabusa identified at the breakfast meeting.

1 contacting people associated with the campaign.²⁸ As such, later the same day Raymond
2 sent an e-mail to the personal e-mail accounts of Tanonaka, Peter Boylan — who was
3 subsequently hired as the Committee's Communications Director — and Jennifer Sabas,
4 a volunteer adviser to the Committee, stating:

5 As I'm sure you've heard, PhRMA has committed to pulling together an
6 independent expenditure on CH's behalf. Nick Shipley (Government Relations
7 VP) and Bob [Filippone] (Senior VP) are the leads on this and would like to be
8 put in touch with folks on the campaign. After having talked with Nick about this
9 a little more, and based on our discussion, I came to the conclusion that it is the
10 three of you th[at] he would like to be in touch with. I am going to give him your
11 e-mail address so he can be in touch. I didn't feel comfortable giving out your
12 phone numbers.

13
14 Should you be contacted by Nick or Bob please know they are good [D]emocrats.
15 Let me know if you have any questions.²⁹
16

17 Raymond then sent Shipley the names and personal e-mail addresses for Tanonaka,
18 Sabas, and Boylan.³⁰ When Sabas replied to Raymond's e-mail and asked about
19 PhRMA, Raymond replied, "My guess is they will do mid to high six digits (\$\$) in
20 mailers on our behalf."³¹

²⁸ See Raymond Decl., Att. at CR000009. Compare Shipley Aff. ¶ 12 (confirming that neither Sabas nor Miyasato had an official role in the race, nor a position with the Committee, before speaking with them on July 26, 2013), with Raymond Decl. ¶¶ 12, 13 (describing how Raymond assisted Shipley "in making contacts with certain persons associated with the Congresswoman's office or campaign" and directed Shipley to Rod Tanonaka, Hanabusa's Chief of Staff, instead of to Miyasato who "was being given a reduced role in the campaign, and . . . would not be a very good contact for getting information about the status of the campaign.").

²⁹ Copies of the e-mail are included at Appendix 1 to the Complaint, pages CR000011-12 of the Attachment to Raymond's Declaration, and Exhibit A of the Committee's Response.

³⁰ Raymond Decl. ¶ 16.

³¹ *Id.* ¶ 15, Att. at CR000011.

1 3. The Committee Has Not Received Any Contributions from
2 PhRMA

3 Notwithstanding the communications described above, the record contains no
4 information that PhRMA has made any independent expenditures for the Committee's
5 benefit or direct contributions to the Committee in the 2013-2014 election cycle to date.
6 A review of the Commission's database does not reveal any reported independent
7 expenditures supporting Hanabusa for the 2014 election.

8 **B. Legal Analysis**

9 1. Prohibited Corporate Contributions

10 The Act prohibits corporations and other organizations, including membership
11 organizations, from making contributions from their general treasury funds in connection
12 with any election of any candidate for federal office.³² The Act also prohibits any
13 candidate from knowingly accepting or receiving any prohibited contribution.³³

14 The Act defines a contribution as "any gift, subscription, loan, advance, or deposit
15 of money or anything of value made by any person for the purpose of influencing any
16 election for Federal office."³⁴ Under the Commission's regulations, the term "anything
17 of value" includes all in-kind contributions, and unless specifically exempted, the
18 provision of goods and services for no charge or at a charge that is less than the usual and
19 normal charge.³⁵

³² 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a), (d).

³³ 2 U.S.C. § 441b(a).

³⁴ *Id.* § 431(8)(A)(i).

³⁵ 11 C.F.R. § 100.52(d)(1).

1 Additionally, an expenditure made by any person "in cooperation, consultation, or
2 concert, with, or at the request or suggestion of, a candidate, his authorized political
3 committees or their agents" constitutes an in-kind contribution to that candidate.³⁶

4 An expenditure for a communication is coordinated, and therefore is a prohibited
5 contribution, only if it satisfies the three prongs of the coordination test: payment,
6 content, and conduct.³⁷

7 Here, because no communications were ever created and PhRMA made no
8 contribution either directly or in-kind to the Committee, and the Committee never
9 received any such contribution from PhRMA, there can be no coordinated
10 communication and thus no violation of 2 U.S.C. § 441b(a). Accordingly, we
11 recommend that the Commission find no reason to believe that PhRMA or the Committee
12 violated 2 U.S.C. § 441b(a).

13 2. Prohibited Solicited Contributions

14
15 The Act prohibits candidates or individuals holding federal office, or their agents
16 from soliciting or directing "soft money" — funds outside of the Act's prohibitions and
17 limitations.³⁸ Commission regulations define "solicit" as "to ask, request, or recommend,
18 explicitly or implicitly, that another person make a contribution, donation, transfer of
19 funds, or otherwise provide anything of value."³⁹ The regulations define "direct" as "to
20 guide, directly or indirectly, a person who has expressed an intent to make a contribution,

³⁶ 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. §§ 109.20, 109.21(b).

³⁷ 11 C.F.R. § 109.21.

³⁸ 2 U.S.C. § 441i(c)(1)(A); 11 C.F.R. § 300.61.

³⁹ 11 C.F.R. § 300.2(m).

1 donation or transfer of funds, or otherwise provide anything of value, by identifying a
2 candidate, political committee or organization, for the receipt of such funds, or things of
3 value.”⁴⁰

4 As discussed above, the Act prohibits membership organizations from making
5 contributions using their general treasury funds in connection with any election of any
6 candidate for federal office.⁴¹ The Act limits contributions by political committees
7 controlled by membership organizations to any candidate and her authorized political
8 committees to \$2,600 per election for the 2013-2014 election cycle.⁴² But the Act allows
9 political committees controlled by membership organizations that are multicandidate
10 committees to contribute to any candidate and her authorized political committees \$5,000
11 per election for the 2013-2014 election cycle.⁴³ Thus, federal candidates and their agents
12 may solicit contributions only up to \$2,600, or \$5,000 from multicandidate political
13 committees, per election from political committees controlled by membership
14 organizations that are otherwise permitted to contribute.

15 While the Act prohibits membership organizations from making contributions to
16 federal candidates using their general treasury funds, membership organizations may

⁴⁰ *Id.* § 300.2(n).

⁴¹ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a), (d).

⁴² 2 U.S.C. § 441a(a)(5); 11 C.F.R. §§ 110.1(b)(1), 110.17(b); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8,530 (Feb. 6, 2013).

⁴³ A multicandidate committee is a political committee with more than 50 contributors which has been registered for at least six months and, with the exception of state party committees, has made contributions to five or more candidates for federal office. 11 C.F.R. § 100.5(e)(3). PhRMA's PAC, Pharmaceutical Research & Manufacturers of America Better Government Committee ("PhRMA PAC"), is a multicandidate committee. According to records maintained by the Reports Analysis Division, PhRMA PAC met the qualification criteria to become a multicandidate committee on October 25, 1978.

1 spend unlimited amounts of general treasury funds on independent expenditures.⁴⁴ But if
2 any expenditure is “made in cooperation, consultation or concert with, or at the request or
3 suggestion of, a candidate [or] a candidate’s authorized committee,” it is coordinated and,
4 therefore, an in-kind contribution to the candidate with whom it was coordinated.⁴⁵ In
5 turn, the solicitation or direction of such a coordinated contribution would be prohibited
6 by 2 U.S.C. § 441i(e) if the coordinated in-kind contribution exceeded \$2,600, or \$5,000
7 from multicandidate political committees, for each election during the election cycle,
8 because the Act’s solicitation restrictions remain applicable to contributions solicited by
9 federal candidates, officeholders, and their agents.⁴⁶ The solicitation or direction itself
10 violates the Act, even if it yields no contribution or communication.⁴⁷

11 This matter presents the question whether Representative Hanabusa or agents
12 acting on her or the Committee’s behalf solicited or directed PhRMA or PhRMA PAC,
13 via Shipley or Filippone, to contribute “soft money” in excess of the Act’s limits or in

⁴⁴ See *Citizens United v. FEC*, 588 U.S. 310 (2010). An independent expenditure “means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or their agents[.]” 11 C.F.R. § 100.16.

⁴⁵ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1), (d).

⁴⁶ 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. The Act’s solicitation restrictions remain applicable to contributions solicited by federal candidates, officeholders, and their agents, even if the contributions are solicited for non-coordinated independent expenditures. See Advisory Op. 2011-12 (Majority PAC and House Majority PAC) (concluding that, consistent with section 441i(e), a federal candidate or officeholder could not solicit unlimited individual, corporate, and labor organization contributions on behalf of an independent expenditure-only political committee because those funds would not be subject to the limitations and prohibitions of the Act); Advisory Op. 2011-21 (Constitutional Conservatives Fund PAC) (similar).

⁴⁷ 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 300.61 prohibit federal candidates, officeholders, and their agents from, among other things, soliciting or directing funds not subject to the limitations and prohibitions of the Act without imposing any additional requirement that the solicitation or direction be successful in order for these provisions to apply.

1 violation of the Act's prohibitions. Although not conclusive, the present record suggests
2 that such a solicitation or direction may have occurred.

3 From the outset, Raymond's interactions with Shipley focused specifically on
4 PhRMA's ability to provide financial assistance to advance the Committee's campaign
5 efforts. In his first e-mail to Shipley on June 17, 2013 — apparently at Shipley's
6 suggestion following their introduction at the Committee's "meet and greet" — Raymond
7 informed Shipley that "[t]here is no doubt the Congresswoman would benefit from the
8 support of PhRMA" and that the Committee is "at a *significant financial disadvantage*."⁴⁸
9 Raymond then scheduled the June 26, 2013, breakfast meeting for Hanabusa, Shipley,
10 and Filippone so that, as Shipley proposed, they could "talk more extensively in person
11 about *what [PhRMA] can do here to help support the Congresswoman*."⁴⁹

12 With respect to the June 26, 2013, breakfast meeting, which Slates attended with
13 Hanabusa, Shipley, and Filippone when Raymond became ill, Representative Hanabusa
14 and Slates both deny in unsworn statements that they in fact solicited non-federal funds in
15 connection with an election for federal office, and Hanabusa further asserts that she did
16 not authorize any agent to solicit such funds.⁵⁰

17 But other information in the record tends to suggest that such a solicitation or
18 direction may have occurred. Although the sworn affidavits of Shipley and Filippone
19 tend to corroborate Hanabusa and Slates's general account of the June 26, 2013, breakfast

⁴⁸ Raymond Decl. ¶¶ 4, 6 (emphasis added), Att. at CR000002.

⁴⁹ *Id.*, Att. at CR000002 (emphasis added).

⁵⁰ Hanabusa Decl. ¶ 6; Slates Decl. ¶ 6. Although Hanabusa and Slates each have submitted unsworn statements concerning their discussions specifically during the June 26, 2013, breakfast meeting and denying generally that they solicited or directed an expenditure from PhRMA, Raymond has not denied that he engaged in any such discussions.

1 meeting, they also provide additional information that the declarations omit: that is,
2 Shipley and Filippone's discussion of a potential fundraiser for the Committee that
3 PhRMA PAC would sponsor, along with their request that Hanabusa suggest names of
4 persons unaffiliated with the Committee with whom they could speak regarding
5 Hawaiian politics. Perhaps more telling, Raymond's correspondence with both Slates
6 and Shipley immediately after the June 26, 2013, breakfast meeting describes the meeting
7 in more suggestive terms than the descriptions provided in Respondents' post-hoc
8 submissions: Slates told Raymond that the meeting "[w]ent very well – they're all in"
9 and that Shipley and Filippone promised "PAC bundling in addition to a couple other
10 things,"⁵¹ while Shipley told Raymond that "the meeting went great, we very much want
11 to (and will) help out the Congresswoman. PhRMA can do the obvious PAC donations,
12 but I think we are going to look at doing some independent stuff as well."⁵²

13 Other contemporaneous correspondence between Raymond and Shipley after the
14 June 26, 2013, breakfast meeting also reasonably suggests that an agent of the Committee
15 may have solicited or directed "soft money" from PhRMA. Two days after the breakfast
16 meeting, on June 28, 2013, Raymond and Shipley spoke briefly and discussed PhRMA's
17 "help[] rais[ing] PAC contributions [for the Committee] and doing some 'independent
18 stuff.'"⁵³ Later on June 28, 2013, Raymond sent an e-mail to Tanonaka, Sabas, and
19 Boylan that stated, "[a]s I'm sure you have heard, PhRMA has committed to pulling
20 together an independent expenditure on CH's behalf" and explained that based on his

⁵¹ Raymond Decl., Att. at CR000010.

⁵² *Id.*, Att. at CR000007.

⁵³ *Id.* ¶ 12, Att. at CR000004-07.

1 discussion with Shipley, Tanonaka, Sabas, and Boylan were the “folks on the campaign”
2 with whom Shipley wanted to be in touch.⁵⁴

3 Thus, PhRMA’s statement that it would do “independent stuff” to support
4 Hanabusa’s campaign, such as the six-figure mailer that Raymond described — coming
5 as it did only after Raymond conveyed to PhRMA that its assistance would “benefit” the
6 campaign because the campaign was starting at a “significant financial disadvantage” and
7 after PhRMA’s representative suggested the meeting to discuss “what [PhRMA] can do
8 here to help support the Congresswoman” — reasonably suggests that an agent of the
9 Committee may have solicited or directed a “soft money” contribution or expenditure.

10 Nonetheless, Shipley’s Affidavit and Raymond’s Declaration offer different
11 explanations concerning the import of their references to “independent stuff” and
12 “independent expenditure.” Shipley states that “[b]y using the reference to independent
13 stuff, what I meant was that there are a number of things other than PAC contributions
14 that PhRMA might consider.”⁵⁵ Raymond asserts that when he referred to “an
15 independent expenditure,” he intended to convey Shipley’s reference to “independent
16 stuff,” and not an independent expenditure as defined in the Act.⁵⁶ Raymond further
17 avers that when he sent that e-mail, he “had no idea” whether PhRMA was contemplating
18 an independent expenditure as defined in the Act, or some other activity aside from a

⁵⁴ *Id.* ¶ 13, Att. at CR000011-12.

⁵⁵ Shipley Aff. ¶ 9.

⁵⁶ Raymond Decl. ¶ 14 (“I had not heard Mr. Shipley or others associated with PhRMA or the Hanabusa campaign use that . . . term [independent expenditure]”).

1 PAC contribution that would have been permissible.⁵⁷ Raymond explains that he does
2 not recall receiving any information from Shipley or anyone else representing PhRMA
3 about PhRMA sending mailers or committing a particular amount of spending, but that he
4 had researched on the internet other business groups' reported spending in other
5 campaigns for U.S. Senate, and that by offering that opinion he sought to appear more
6 knowledgeable than he was.⁵⁸

7 According to Raymond, "it seemed logical . . . that any third party spending for
8 messaging would be set up in a way that was fully permissible" and Raymond "trusted
9 the PhRMA representatives and the Hanabusa campaign representatives to know how to
10 do the right thing."⁵⁹ Raymond also states that he "assumed that whatever plans or
11 coordination took place thereafter would be within whatever rules the FEC enforces."⁶⁰
12 Indeed, "independent stuff" could have referred to a number of permissible actions by
13 PhRMA or its separate segregated fund, such as endorsing Hanabusa under 11 C.F.R.
14 § 114.4(c)(6) or soliciting its members for contributions to Hanabusa pursuant to
15 11 C.F.R. § 114.2(f)(3)(i) and (f)(4)(ii).

16 In the enforcement context, the "best evidence of why a decision was made as it
17 was is usually an explanation, however brief, rendered at the time of the decision[,] and
18 affidavits (or unsworn statements) submitted after a Commission inquiry has commenced

⁵⁷ *Id.* ¶ 14; *see also id.* ¶ 10 ("I only had a vague idea that PhRMA was contemplating some sort of spending on messaging that would be separate from the campaign committee account's spending. . . . I didn't know the nuances of federal campaign finance law, but did have a generalized sense that a trade association like PhRMA legally can undertake some kinds of messaging that would not qualify as prohibited contributions or expenditures.").

⁵⁸ *Id.* ¶ 15.

⁵⁹ *Id.* ¶ 17.

⁶⁰ *Id.*

1 “raise the risk that they will merely provide a vehicle for a party’s *post hoc*
2 rationalizations.”⁶¹ Here, the Responses were based on affidavits and other unsworn
3 statements that were drafted well after the events at issue, some omit relevant information
4 contained in others, and collectively they appear inconsistent in certain respects with the
5 unguarded statements of individuals involved in the relevant activities rendered at the
6 time of the events in question.

7 Nonetheless, we do not believe that further administrative fact-finding
8 proceedings by the Commission would be warranted under the circumstances presented
9 in this matter. Here, although Raymond’s contemporaneous discussions suggest a
10 possibility that he or another agent of the Committee may have solicited a representative
11 of PhRMA, whether such a solicitation in fact occurred or whether the request or
12 direction involved permissible independent activity remains unclear. Moreover, PhRMA
13 apparently never made any contribution or expenditure to benefit the Committee,
14 notwithstanding the possibility of such a solicitation.⁶² Given these circumstances — the
15 vagueness of the evidence and the apparent lack of any resulting contribution or
16 expenditure — we recommend that the Commission exercise its prosecutorial discretion

⁶¹ *LaBotz v. FEC*, 889 F. Supp. 2d 51, 62 (D.D.C. 2012) (internal quotation marks omitted) (quoting *Ponte v. Real*, 471 U.S. 491, 509 (1985)).

⁶² The instant matter is distinguishable from MUR 6747 (Rick Santorum for President), currently pending before the Commission. There, the record reflected that an individual who contributed \$2.25 million to an independent-expenditure-only political committee supporting Santorum’s candidacy made statements — later retracted — indicating that he was solicited by the campaign to do so. Other evidence in the record also tended to suggest that the donor was solicited through his agent, and the donor’s affidavit failed to refute the allegation in full. We therefore recommended that the Commission find reason to believe that the committee violated 2 U.S.C. § 441i(e) and conduct an investigation. Here, however, the record is less clear that a solicitation may have occurred and does not involve any resulting contribution or expenditure, let alone of the amount at issue in MUR 6747.

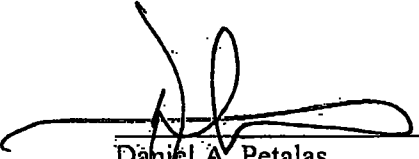
to dismiss the possible violation of 2 U.S.C. § 441i(e)(1)(A) under *Heckler v. Chaney*,⁶³
issue letters of caution to the Committee and Raymond, and close the file.

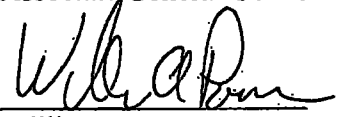
III. RECOMMENDATIONS

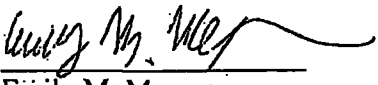
1. Dismiss the allegation that Hanabusa for Hawaii and George S. Yamamoto in his official capacity as treasurer or its agent violated 2 U.S.C. § 441i(e)(1)(A) and issue a letter of caution.
2. Dismiss the allegation that Christopher Raymond violated 2 U.S.C. § 441i(e)(1)(A) and issue a letter of caution.
3. Find no reason to believe that Hanabusa for Hawaii and George S. Yamamoto in his official capacity as treasurer violated 2 U.S.C. § 441b(a).
4. Find no reason to believe that the Pharmaceutical Research and Manufacturers of America violated 2 U.S.C. § 441b(a).
5. Approve the attached Factual and Legal Analysis.
6. Approve the appropriate letters; and
7. Close the file.

Date

July 22, 2014


Daniel A. Petalas
Associate General Counsel


William A. Powers
Assistant General Counsel


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Attorney

⁶³ 470 U.S. 821 (1985); *see* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) ("[T]he Commission will dismiss a matter when the matter does not merit further use of Commission resources, due to factors such as the small amount or significance of the alleged violation [or] the vagueness or weakness of the evidence . . .").